VIRGINIA LAW REGISTER.

JNO. GARLAND POLLARD, EDITOR, Richmond, Va.

CHRISTOPHER B. GARNETT, GEORGE C. GREGORY, ASSOCIATE EDITORS.

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Hon. Geo. K. Anderson.

Hon. Geo. K. Anderson, judge of the Nineteenth Circuit, was born in Louisa county, March 6, 1860. He was admitted to the bar in 1881. In 1884 he married Miss Susie L. Gooch, of Louisa county. In 1887 he was elected commonwealth's attorney of his native county, which office, however, he resigned in 1890 when he removed to Clifton Forge, Alleghany county. In his new field of labor he soon built up a large and lucrative practice. In 1895 he was elected judge of the county courts of the counties of Alleghany and Craig. Bath county was added to his judicial district in 1898.

Upon the formation of the new Nineteenth Circuit, he was the almost unanimous choice of the members of the bar of that circuit for the office of circuit judge, to which, in 1904, he was elected by the legislature.

He represented the counties of Alleghany, Bath and Highland in the Constitutional Convention of 1901-2.

His uniform courtesy, the untiring attention given by him to the discharge of his official duties, his freedom from bias or prejudice, and the methodical manner in which he dispatches business have won for him the esteem and confidence of the people of his circuit, particularly the members of the bar.

Forthcoming Virginia Law Books.

We feel it our duty to warn the profession of the early coming of an avalanche of Virginia law books. This we do with genuine pleasure, because we believe that it would be difficult to multiply unduly books devoted particularly to the law as administered in this state. Heretofore comparatively few Virginia lawyers have had time and inclination to lighten the labors of their brethren by the preparation of law books especially adapted to use in this state. This

is largely accounted for by the fact that the sale of such books are necessarily restricted to a limited field and hence are unprofitable.

Professors Lile and Minor of the University of Virginia are engaged in writing works to be based on Minor's Institutes, and Professor Graves is soon to issue a work on Real Property; Hon. Isaac Diggs of the Richmond bar is to give us a book on Virginia corporations, which will be most timely and helpful in view of the recent radical changes in our statutes on that subject. Mr. Wm. E. Ross, also of the Richmond bar, is soon to prepare a book embodying in classified form all the instructions to juries which have been approved by the courts of last resort in Virginia and West Virginia; Mr. Carroll G. Walter of Winchester has written a treatise on notaries public in Virginia, which will soon appear as a part of the new Guide to Magistrates, Constables, and Notaries Public, which our associate editor, Mr. Garnett, and the editor, have in preparation. Last but not least is a form book being prepared by our associate, Mr. Gregory, the announcement of which has been received with enthusiasm by the bar.

Official Court Stenographers.

One respect in which Virginia is not abreast with the times in the administration of justice, is its failure to provide for official court stenographers. A true record of the testimony in common law cases is often absolutely essential for the proper administration of justice. Lawyers frequently disagree as to what witnesses have said, and it is often impossible for the court to grasp and retain the details of the testimony. It has been the practice in important cases for one of the parties to employ and pay a stenographer to take down the testimony. The stenographer thus employed is not an officer of the court, but a private agent of one of the parties, and though such stenographers have usually been men of honor and have made true records of the proceedings, yet it is highly important that the man performing such an important function should be an officer of the court and under oath to perform his duties faithfully and impartially. There is a great need in this state, especially in the larger cities, for the creation of the office of official stenographer. He should be paid a *per diem*, to be taxed in the costs, and if either party desires a transcript of the testimony he ought to be allowed to direct

the stenographer to make the same at a price to be fixed by law. We have examined the statutes of Massachusetts and Ohio on the subject and find that the laws regulating the same are carefully worked out in detail, and in some respects would furnish excellent models for a Virginia statute. The bar associations of the cities should take the matter up and have a proper statute prepared ready to present to the General Assembly at its next session. We invite the members of the bar to discuss the subject through the columns of the REGISTER.

Telegraph Penalty Statutes.

We print in this issue two opinions of trial courts rendered under telegraph penalty statutes (Va. Code 1904, sec. 1294h (5-6)). These sections are substantially the same as secs. 1291-2 of the Code of 1887. It is to be regretted that the General Assembly in re-enacting these statutes did not remove the many defects which have made them the playthings of the telegraph companies from the time they were first enacted. We invite all the trial courts to send us their opinions under these statutes, for the reason that the Supreme Court of Appeals has declared that it will no longer grant writs of error in cases arising thereunder. *W. U. Tel. Co.* v. *Reynolds,* 100 Va. 459, 41 S. E. 856. There has been great diversity in the opinions of trial courts under these sections, so that what is law in one judicial circuit is not law in another. Some of the many points raised with more or less success by the telegraph companies are as follows:

1. They contend that the provision requiring them to transmit, etc., upon the payment of the established charges therefor, etc., relieves them from all liability under the statute unless the charges are actually prepaid in cash at the sender's end of the line. That is, that even if they see fit to credit the sender, or even though he might have actually paid for the telegram *after* transmission, he has no rights under the statute. And though the dispatch may have been sent "collect" and paid for by the sendee, yet under the terms of the statute there can be no recovery by either party. This contention is decided adversely to the company in the case of *Kennedy* v. *W. U. Tel. Co.,* reported in this number, but we are informed that other trial courts have taken a different view, as has the Supreme Court

of Georgia under a similar statute. *Langley* v. *W. U. Tel. Co.,* 88 Ga. 777, 15 S. E. 291.

2. It has been contended by the telegraph companies that although as the statute (5) provides that it is their duty to receive and transmit faithfully and impartially, that is, *if they transmit at all,* yet it does not cover a case where they receive a message and wholly fail to transmit. Although this distinction is somewhat strained, yet the companies contend that the statute being penal must be strictly construed.

3. The telegraph companies further contend that their default under these sections (in as much as they are penal in their nature) must be wilful and wanton, and that they do not apply in cases of mere negligence. In other words, they contend that the plaintiff must prove a wanton disregard of his rights, which, of course, he can rarely do, because when he hands his message to the company, his knowledge concerning the manner of its handling ceases, and in the nature of things he is totally unprepared to prove that the company's default was wilful or wanton.

4. Again, it has been contended that it is not enough to show that the message was unfaithfully transmitted, but in addition it must be shown that there was *partiality,* that is, that the message was neglected on account of the company's desire to serve some other patron in preference to the plaintiff. This, it will be seen, was a successful contention in the case of *Maury* v. *W. U. Tel. Co.,* reported in this issue. If the opinion be correct it practically nullifies the statute, because the plaintiff rarely if ever can meet the requirement of showing that the company had been both unfaithful *and* partial. All that he usually knows is that it has been unfaithful, and it is not within his power to show that lack of proper service grew out of the company's partiality to other patrons.

5. Again, it is contended that the statute does not require the *accurate* transmission of the telegram. See *Maury* v. *W. U. Tel. Co., supra.* In a case recently decided in the Circuit Court of the City of Richmond a party telegraphed another, "Can't meet you today," and the company delivered it, "Can meet you today." The sendee relying on the telegram traveled several hundred miles in response to it. The court decided that the statute afforded no relief in such a case.

Such are some of the many defects which make this statute a disgrace to our statute books and which cause great diversity in the administration of its provisions by the various courts, giving to a citizen in one part of the state relief which in another part of the Commonwealth is denied. Even in the City of Richmond lawyers have considered before bringing such suits in which court they would proceed, selecting their forum according as the previous decisions of the judges accord with their view of the case in hand.

The General Assembly by its act 1899-1900, p. 724, continued in Va. Code 1904, sec. 1294h (10), declared that telegraph companies in such cases should be required to respond in damages for grief and mental anguish. The Supreme Court in *Connelly* v. *W. U. Tel. Co.*, 100 Va. 51, declared that the statute was so drawn as not to allow the recovery for mental anguish independent of injury to person or estate. The result is that telegraph companies may with impunity neglect what are termed "social" telegrams. They may cast aside a message announcing the dying condition of a loved one, or any other message, the neglect of which can not bring pecuniary damage, and although the injury inflicted on the parties concerned might entail much more suffering than could any pecuniary loss, yet there is no redress, unless the plaintiff can escape the many pitfalls which characterize these absurdly defective statutes. A bill to correct these defects was introduced in the General Assembly at its session 1902-3-4, but it "died in committee"—that graveyard in which are interred so many good measures which would incur the risk of passing if they were allowed to emerge alive into the forum of open debate.

THE HONORABLE GEORGE K. ANDERSON

JUDGE OF THE NINETEENTH CIRCUIT